Gautom Brahma Vs The State of Assam

W.A. No. 235 of 2013

Court: Gauhati High Court

Date of Decision: March 27, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 15, 16, 226

Citation: (2014) LabIC 2944

Hon'ble Judges: Abhay Manohar Sapre, C.J; Arup Kumar Goswami, J

Bench: Division Bench

Advocate: S. Sarania, Advocate for the Appellant; B. Goyal, G.A, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Abhay Manohar Sapre, C.J.
This is an intra-court appeal filed by the writ petitioners of WP(C) No. 4129/2013 under Rule 2(3) of

Chapter V-A of the Gauhati High Court Rules against the order dated 26.07.2013 passed by the single Judge in abovementioned writ petition. By

the impugned order, the learned single Judge dismissed the writ petition filed by the writ petitioners.

2. So the short question, which arises for consideration in this intra court appeal, is whether learned single judge was justified in dismissing the writ

petition.

3. The appellants are working as Constables in 7th Assam Police Battalion. They were posted at Kokrajhar. They were transferred to different

places by the transfer order dated 16.5.2013 issued by Additional Director General of Police (TAP). They were not satisfied with their transfer

order and hence feeling aggrieved by their transfer order filed the aforesaid writ petition under Article 226 of Constitution, out of which, this writ

appeal arises. The appellants impugned the transfer order contending inter alia that firstly, no case was made out for their transfer, secondly, it was

mala fide in nature and being violative of principles enshrined in Article 15/16 of Constitution was liable to be set aside and thirdly, the transfer

order was passed against the appellants because they belonged to one community and hence, it was not legally sustainable.

4. The learned single Judge found no merit in the contentions and dismissed the writ petition and hence, this writ appeal by the writ petitioners.

5. Heard Mr. M. Sarania, learned counsel for the appellants and Ms. B. Goyal, learned Govt. Advocate, Assam on the ground of admission.

6. Having heard learned counsel for the appellants and on perusal of the record of the case, we find no merit in this appeal. As a consequence, the

same deserves to be dismissed in limine.

7. At the outset, we may take note of certain well-settled principles, which govern the cases relating to transfer of an employee in service

jurisprudence.

8. The transfer of any employee from ""A"" place to ""B"" by his employer is always regarded as an incidence of his service condition. Indeed, it is

inherent in his service conditions. It is the right of an employer to transfer his/her employees to any place depending upon the exigencies,

requirements and need etc. No employee can legally assert that he has a right to remain at a particular place for all his service tenure or only to

remain at a place of his choice, if transferred. It is, therefore, always regarded as an administrative decision on the part of an employer, while

ordering transfer of any particular employee or particular set of employees to a particular place.

9. This right cannot be challenged by an employee. In other words, only because an employee is asked to go to a place, which may or may not be

of his liking would not be a ground to seek judicial protection against such order. In other words such action on the part of an employer cannot be

made subject-matter of judicial scrutiny in writ jurisdiction, nor does it give rise to any cause of action to successfully assail in Court on the well-

settled parameters, judicially recognized by Courts.

However, there are certain well-defined exceptions carved out by judicial precedents as to under what circumstances, the writ court or to say any

Court is competent to examine the legality and correctness of any transfer order. These exceptions broadly are -- if the transfer order is issued by

a competent authority with some definite malice against the employee or when it is found to have been issued against any statutory provisions,

which govern such transfer, or when it is found to be ex facie arbitrary, or is issued by a person not competent to issue such order, or when it is

found to be contrary to terms of service condition or/and any statutory policy etc. These are usually the grounds, which are made basis to examine

the legality and correctness of transfer order on judicial side.

10. Learned counsel for the appellants essentially argued one legal point with vehemence. According to him, the impugned order transferring the

appellants was violative of Article 15/16 of the Constitution because no transfer could be made of any employee on the basis of his caste or

religion and since in this case the caste was the consideration and hence the impugned transfer order was bad in law. He, therefore, attacks the

impugned transfer order on the ground of mala fides. We do not agree to this argument for more than one reason.

11. Firstly, this argument has now really become academic for the simple reason that the appellants pursuant to the impugned order of transfer

have already joined at the new place of their posting long back. In this way, the impugned order was executed. Secondly, it is also noticed on

perusal of the order passed on appellants'' representation made pursuant to earlier writ issued by the High Court in appellants'' writ petition

granting them liberty to file representation against their transfer that they were found to be working at one place for long time since eighties and

nineties etc. This factor was, therefore, taken into account and accordingly, those who had not completed three years at one place, were allowed

to remain there; whereas those who had been at one place for more than 3 years and for long were transferred to different places by impugned

order. Thirdly, it cannot therefore be said that appellants were targeted for their transfer only because they belonged to any particular caste. Had

this been the reason, then those who were allowed to remain though belonged to the same caste too would have been sent out along with the

appellants regardless of their length of stay at one place and lastly, transfer order did not result in any kind of punishment to the appellants as far as

their emoluments, service conditions, promotion avenues were concerned. The transfer order, therefore, was in our view, passed essentially

keeping in view public and law and order coupled with several administrative exigencies and lastly since no allegations of mala fides were alleged

against any particular officer and nor any one was made party respondent in his personal capacity in the writ petition, we are not inclined to

entertain the submissions based on violation of Article 15/16 of the Constitution or mala fides.

In view of aforesaid discussion, we find no substance in the appeal which fails and is dismissed in limine. No cost.